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In the Supreme Court of the United States

OCTOBER TERM, 1987

SHELL OIL COMPANY, APPELLANT

v.

DIRECTOR OF REVENUE OF MISSOURI

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLEE

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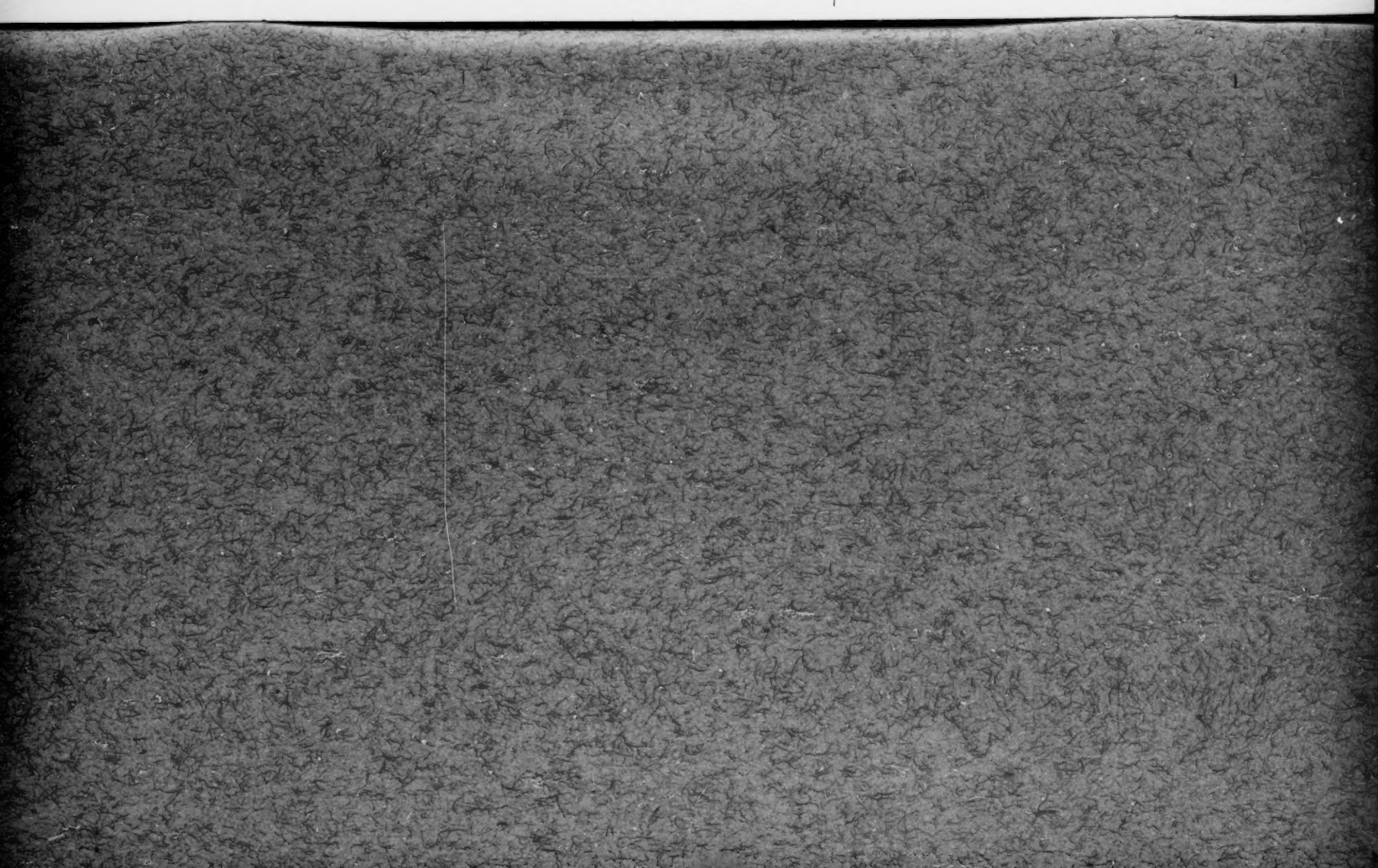

QUESTION PRESENTED

Whether the imposition of county sales taxes on appellant's sales of aviation fuel to various airlines at an airport within the county violated the Commerce Clause or the Fourteenth Amendment.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLEE

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

1. Appellant Shell Oil Company is a Delaware corporation with its principal business office in Houston, Texas. It has long been engaged in the business of marketing various petroleum products throughout most of the United States. For the period at issue in this case (1978-1981), appellant entered into contracts for the sale of aviation fuel to a number of airlines, some of which used Lambert-St. Louis International Airport in St. Louis County, Missouri. Each contract was executed by appellant in Houston and included an estimated annual

gallonage of fuel to be sold. Stip. paras. 1-4, 6; App., *infra,* 1a-2a.[1]

Appellant did not maintain, operate, or own any aviation fuel storage facility at the St. Louis County airport. Nor did it maintain anywhere in Missouri any administrative or sales office, store, warehouse, or similar facility that participated in the sale or delivery of aviation fuel to the airlines at that airport. Stip. paras. 15, 19; App., *infra,* 3a-4a. Rather, appellant sold the contracted-for fuel to the airlines through a series of fuel "exchange agreements" with Amoco Oil Company (Amoco). Those agreements, together with appellant's airline contracts, allowed appellant to sell and to deliver aviation fuel to the airlines at the airport via fuel facilities at the airport maintained by Allied Aviation Fueling Company of St. Louis, Inc. (Allied), and a pipeline from Amoco's refinery at Wood River, Illinois. Stip. paras. 5, 9; App., *infra,* 2a, 3a.

An airline's purchase of particular quantities of fuel from appellant began with Allied, a company with which appellant had no contractual relationship and in which appellant had no financial interest. Allied operated an aviation fuel storage and distribution system at the airport; it contracted with the airlines to render fueling services to them and was directly paid by them. Upon receiving instructions from the airlines, Allied employees decided when to request delivery of fuel, the quantity of fuel to be delivered, what airlines would receive particular deliveries, and when deliveries would begin and end. Stip. paras. 12, 13, 17; App., *infra,* 3a, 4a.

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[1] This case was submitted to the Administrative Hearing Commission of the State of Missouri on an agreed Stipulation of Facts (J.S. App. 14a). We include the Stipulation of Facts as an appendix to this brief.

The aviation fuel thus ordered through Allied was obtained from the Amoco refinery in Wood River, Illinois, and transported to airport storage tanks through a pipeline.[2] A meter owned by Amoco at the airport end of the pipeline was read by Allied employees, who recorded the quantity of fuel delivered into storage, tendered the meter ticket to the airline customer, and sent a copy to appellant's Chicago office, which then billed the airline purchasing the fuel. Stip. paras. 5, 9, 11, 12, 16, 20; App., *infra*, 2a, 3a, 4a. Pursuant to appellant's contracts with Amoco and with the airlines, appellant both obtained and transferred title to the fuel at the airport: as aviation fuel flowed through the meter at the airport and was delivered into storage, title to the fuel passed instantaneously from Amoco to appellant and then to the airline for which the fuel had been ordered. Stip. paras. 12-14, 17, 18; App., *infra*, 3a, 4a.

2. The State of Missouri has long imposed a statewide sales tax (at three percent from 1978 through 1979, and four percent thereafter) on the sale of tangible personal property at retail in the State. Mo. Ann. Stat. § 144.020.1(1) (Vernon 1976 & Supp. 1988).[3] The seller is primarily responsible for payment of the tax, but the seller is also generally directed to add the tax to the sale price to the purchaser (*id.* §§ 144.021, 144.080, 144.285). Ap-

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[2] The pipeline is owned by St. Louis Pipeline Company and operated by Amoco Pipeline Company, a wholly-owned subsidiary of Standard Oil Company (Indiana). Appellant has no equity or other ownership interest in St. Louis Pipeline Company, Amoco Pipeline Company, or Amoco. Stip. paras. 7, 8; App., *infra*, 2a.

[3] For purposes of the issues in this case, there is no material difference between the current versions of the relevant statutes and the versions in effect during the years at issue here. We therefore cite the current versions of the statutes.

pellee Director of Revenue collects the tax (*id.* § 32.028.1 (Vernon Supp. 1988)).[4]

Pursuant to Mo. Ann. Stat. § 66.600 (Vernon Supp. 1987), St. Louis County may add to the state sales tax a county-wide sales tax of its own, at a rate of one percent.[5] Pursuant to Mo. Ann. Stat. § 94.605 (Vernon Supp. 1987), St. Louis County (and the cities of St. Louis and Kansas City) may also impose a transportation sales tax of up to 1/2 percent. Both taxes may be imposed only on sales subject to the state sales tax and only in the manner of, and in accordance with the rules governing, that tax. *Id.* §§ 66.605, 66.610, 94.605, 94.610. St. Louis County adopted the authorized one percent supplemental sales tax in 1977. J.S. App. 36a (St. Louis County, Mo., Ordinance 8378 (Sept. 13, 1977)). It adopted the authorized transportation tax in 1973. J.S. App. 35a-36a (St. Louis County, Mo., Ordinance 6792 (June 28, 1973)).

Sections 66.615 and 94.620, Mo. Ann. Stat. (Vernon Supp. 1987), contain identical language concerning where

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[4] Missouri also imposes a use tax on certain goods, in the same amount as the sales tax; and it directs vendors who make sales of goods "for the purpose of storage, use or consumption in th[e] state," which is presumed from in-State delivery, to collect the use tax from purchasers of their goods. Mo. Ann. Stat. §§ 144.610, 144.615, 144.620, 144.635 (Vernon 1976 & Supp. 1988). As is common throughout the Nation, this "compensating" use tax (*id.* § 144.600) is designed chiefly to protect the sales tax. Accordingly, no use tax on goods must be paid by persons who have paid the (seller's) Missouri sales tax; and if a lower out-of-State sales or use tax has been paid, the Missouri use tax is due only for the excess of the Missouri tax over the out-of-State tax. *Id.* § 144.615.

[5] Other counties are authorized to impose supplemental sales taxes of 1/4, 3/8, or 1/2%. Mo. Ann. Stat. §§ 67.505 *et seq.* (Vernon Supp. 1987). Cities are authorized to impose supplemental sales taxes of 1/2, 7/8, or 1%. See *id.* §§ 94.500 *et seq.* (Vernon 1971 & Supp. 1987).

particular sales are deemed to occur for purposes of the two county taxes. With exceptions not relevant here, each provides that "all retail sales shall be deemed to be consummated at the place of business of the retailer." Each further provides: "In the event a retailer has more than one place of business in this state which participates in the sale, the sale shall be deemed to be consummated at the place of business of the retailer where the initial order for the tangible personal property is taken, even though the order must be forwarded elsewhere for acceptance, approval of credit, shipment or billing."

3. Appellant paid the statewide "sales or use taxes" for aviation fuel delivered at the airport and has not contested its liability for such taxes (Stip. para. 24; App., *infra,* 5a).[6] Appellant denied its liability for the two taxes imposed by St. Louis County on the same fuel transactions (*ibid.*). Appellee Director, taking the contrary view, assessed appellant for the two county taxes for the period from March 1, 1978, through February 28, 1981, in the aggregate amount of $103,009.53, including interest (Stip. paras. 21, 22; App., *infra,* 4a-5a).[7]

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[6] The stipulation does not specify whether the state tax paid was the sales tax or the use tax (see note 4, *supra*). As the Missouri Supreme Court observed (J.S. App. 3a), however, the Administrative Hearing Commission concluded that, because the sales took place in the State, the tax paid was a sales tax (J.S. App. 17a n.3). Appellant points out (Reply Br. 6 n.6) that it has always contended that the state tax it paid was the use tax and that it had no reason to challenge the contrary ruling because it would be liable in any event for the same amount.

[7] The stipulation gives numbers for the taxes and the interest for each of the two county taxes. The sum of those four figures is $103,009.53. The stipulation also gives a number for the sum of taxes and interest for the county sales tax and a number for the sum of taxes and interest for the county transportation sales tax. Those two figures add up to $104,009.53. The discrepancy results from the fact that the

Appellant appealed to the State Administrative Hearing Commission, which agreed with appellee's assessment (J.S. App. 14a-24a). After making findings based on the stipulated facts (*id.* at 15a-17a), the Commission concluded that appellant's contracts with the airlines were merely contracts for future sales (*id.* at 22a-23a), that the actual sales and transfers took place at the airport upon each airline's "request for service from Allied" (*id.* at 23a-24a), and that appellant accordingly had a "place of business" in the county, within the terms of Mo. Ann. Stat. §§ 66.615 and 94.620 (Vernon Supp. 1987) (J.S. App. 23a-24a). The Commission did not discuss appellant's constitutional challenge to the imposition of the county taxes.

A divided Supreme Court of Missouri affirmed (J.S. App. 1a-12a). After observing that the airport fuel sales were subject to the Missouri sales tax because title passed at the airport (*id.* at 4a-5a), the court rejected appellant's "principal contention"—that its sales were exempt under the "place of business" provisions, Mo. Ann. Stat. §§ 66.615, 94.620 (Vernon Supp. 1987), "because it [did] not maintain a place of business in St. Louis County" (J.S. App. 1a). The court ruled that the relied-on provisions, which state that "retail sales shall be consummated at the place of business of the retailer," apply only to transactions that might have a nexus with more than one state subdivision. They do not apply here, the court held, because "[t]hese sales [were] entirely consummated in St. Louis County where[] [appellant], through its agents, deliver[ed] the aviation fuel, and passe[d] title to the purchasers and ultimate users, the airlines with whom it has contracted." *Id.* at 5a.

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tax and interest figures for the transportation tax do not in fact add up to the figure given by the stipulation for their sum.

Based on the same view of the fuel sales, the court also rejected appellant's Commerce Clause and Due Process Clause challenges (J.S. App. 7a-8a). "Since this Court has found the sale[s] to be intrastate in character, this challenge evaporates. * * * The sale[s] themselves are inextricably linked to St. Louis County. Through its agent, [appellant] maintains a continuing presence at Lambert Field by which it fulfills its contracts with airlines which operate there." *Ibid.*[8] The dissenting judges concluded (*id.* at 9a-12a), to the contrary, that appellant's sales had an insufficient connection to Missouri.

DISCUSSION

Appellant contends in this Court that the Commerce Clause (J.S. 12-18), the Fourteenth Amendment Due Process Clause (*id.* at 20), and the Equal Protection Clause (*id.* at 21-22) prohibit imposition of the St. Louis County taxes on its sales of fuel to the Lambert Field airlines. As appellant recognizes (*id.* at 12), the Commerce Clause contention is governed by the standards summarized by this Court in *Complete Auto Transit, Inc.* v. *Brady,* 430 U.S. 274, 279 (1977): the taxed activity must have a nexus with the taxing State; the measure of the tax must be fairly related to the State's protections and services; the tax must be fairly apportioned so as to protect against multiple taxation; and the tax must not discriminate against interstate commerce. See, *e.g., Wardair Canada Inc.* v. *Florida Dep't of Revenue,* 477 U.S. 1, 8 (1986); *Commonwealth Edison Co.* v. *Montana,* 453 U.S. 609, 622-626 (1981). If,

[8] The court stated, "[appellant's] equal protection argument fails for similar reasons" (J.S. App. 8a). Because appellant made no equal protection argument (J.S. 11 n.7), this statement apparently refers to appellant's due process challenge.

as we will show, those standards are easily met in this case, appellant's other challenges fail as well; for, as appellant recognizes (J.S. 20), due process requirements are met here if Commerce Clause requirements are met (see, *e.g.*, *Exxon Corp.* v. *Department of Revenue,* 447 U.S. 207, 220, 227-228 (1980)), and appellant's equal protection argument (J.S. 21-22), which in any event appellant never raised in the state courts (*id.* at 11 n.7), is at best simply a version of the Commerce Clause discrimination argument.[9]

If we put temporarily to one side the question of discrimination, this Court's decisions on state sales taxes (*i.e.*, taxes on sellers imposed on sales and measured by sale price) make clear that the nexus, fair relationship, and fair apportionment requirements of the four-part *Complete Auto* test are satisfied if enough significant aspects of the taxed sales are connected with the taxing State that the sales may be said to take place in that State, so that no other State may tax those sales. See *Tyler Pipe Indus., Inc.* v. *Washington State Dep't of Revenue,* No. 85-1963 (June 23, 1987), slip op. 18 (only one State may tax sale). Although it would be consistent with this Court's decisions to identify the place of passage of title, or ownership, as the single determinative factor that fixes the location for a particular sale (see U.C.C. § 2-106(1) ("sale" is "the passing of title from the seller to the buyer")), this Court has not yet found it necessary, in this relatively uncontrover-

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[9] To the extent appellant suggests that Missouri has deprived it of equal protection by discriminating on the basis of residence or State of incorporation (J.S. 21-22, citing *Williams* v. *Vermont,* 472 U.S. 14 (1985)), the premise of the suggestion is wrong: the alleged discrimination attacked by appellant (see J.S. 16-18, 21-22) turns on the location of a particular activity (taking orders for sales), not on a taxpayer's residence or State of incorporation.

sial area, to adopt such a test. Rather, the Court's decisions have focused on several aspects of sales— principally, order taking, delivery, and title passage—without expressly indicating whether one aspect might be determinative. See *American Oil Co.* v. *Neill,* 380 U.S. 451 (1965) (sales tax invalid where invitations for bids, submission of bids, delivery, and passage of title all occurred out-of-State); *Norton Co.* v. *Department of Revenue,* 340 U.S. 534 (1951) (state sales tax valid as applied to sales having some relation to in-State retail outlets, but invalid where in-State customers sent orders to an out-of-State office, which shipped goods directly to the customer, with no involvement of the in-State retail outlet); *McLeod* v. *J.E. Dilworth Co.,* 322 U.S. 327, 330 (1944) (sales tax invalid where orders were accepted and title was passed, upon delivery to carrier, out-of-State: seller was "through selling" before goods reached taxing State); *McGoldrick* v. *Berwind-White Coal Mining Co.,* 309 U.S. 33 (1940) (sales tax valid where "seller completed his sales" (*McLeod,* 322 U.S. at 330) in the taxing State—order taking, sales office, and delivery all were in the taxing State); *Wiloil Corp.* v. *Pennsylvania,* 294 U.S. 169 (1935) (sales tax valid where orders taken and delivery made in taxing State, even though seller obtained goods out-of-State); *Sonneborn Bros.* v. *Cureton,* 262 U.S. 506 (1923) (same); *Wagner* v. *City of Covington,* 251 U.S. 95 (1919) (sales tax valid where soft-drink seller from out-of-State came to State with loaded truck and took orders and delivered goods in the taxing State).

This is a straightforward case, for, as the Missouri Supreme Court concluded (J.S. App. 5a), the record indicates that all of the relevant aspects of the sale occurred at the airport in the State. First, as the parties' stipulation expressly states, title to the aviation fuel was passed from

appellant to the airlines at the airport; indeed, appellant itself did not own the fuel sold to the airlines until the fuel was present in Missouri. Stip. para. 18; App., *infra,* 4a. Second, appellant, through its contractual arrangements with Amoco and the airlines, delivered the fuel to the airlines' agent (Allied) at the Missouri airport. Stip. para. 5; App., *infra,* 2a (arrangements allow appellant to "deliver aviation fuel at the airport"). Third, although appellant's Texas office had executed "estimated annual gallonage" contracts for future sales (Stip. paras. 3, 4; App., *infra,* 2a), orders for particular quantities of fuel (billed at the time of delivery) were placed by the airlines through Allied's employees, presumably at the airport, who passed on the orders and controlled the deliveries. Stip. para. 17; App., *infra,* 4a. In these circumstances, it is not surprising that the parties' stipulation expressly states that appellant's arrangements allowed it "to sell * * * aviation fuel at the airport" (Stip. para. 5; App., *infra,* 2a), and there can be no doubt that Missouri, and hence St. Louis County, may constitutionally tax the sales at issue.

That the fuel was obtained by appellant from an out-of-State supplier (Amoco's Illinois refinery) is irrelevant, because it does not alter the fact that appellant's sales to the airlines took place at the airport. See *Wiloil Corp.* v. *Pennsylvania, supra; Sonneborn Bros.* v. *Cureton, supra;* cf. *J. Bacon & Sons* v. *Martin,* 305 U.S. 380 (1939) (tax on post-sale "receipt" in State valid). Nor is it relevant that the aviation fuel arrived at the airport by a pipeline operated by someone other than appellant. See *Memphis Gas Co.* v. *Beeler,* 315 U.S. 649, 653 (1942) ("sale of gas at the burner tips by one who pipes the gas into the state or by a local distributor acquiring the gas from another who has similarly brought it into the state, is subject to state taxation"). Nor, contrary to appellant's protests (J.S. 13-14),

can it matter that the Missouri Supreme Court referred to appellant's use of "agents" in the airport sales (J.S. App. 5a, 7a, 8a): whatever the terminology, the fact remains that appellant had a series of contractual arrangements that enabled it to respond to airline customer orders and to obtain, to deliver, and to transfer title to aviation fuel at the Missouri airport.

Appellant suggests (J.S. 15-16) that other States—*i.e.*, Texas and Illinois—could "conceivably" tax the same sales of aviation fuel that Missouri taxes. But no other State has tried or is likely to try to tax those sales, since it is clear that no sale by appellant occurred either in Texas, where only contracts for future sales were executed, or in Illinois, where Amoco but not appellant owned and possessed the fuel.[10] In any event, for precisely the same reasons that Missouri may tax the sales, no other State could validly do so.

The two decisions on which appellant principally relies (J.S. 14-15, 19-20), *National Bellas Hess, Inc.* v. *Department of Revenue,* 386 U.S. 753 (1967), and *Norton Co.* v. *Department of Revenue, supra,* involve entirely different facts from those presented here. In both cases, in-State purchasers sent orders out-of-State for goods that the purchaser knew would come from the seller's out-of-State stock. In this case, as far as the record indicates, the airlines placed their orders for fuel at the airport, without

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[10] See also Tex. Tax Code Ann. § 151.005 (Vernon 1982 & Supp. 1988) (defining "sale" for sales-tax purposes, as relevant here, to mean transfer of title or possession); Tex. Bus. & Com. Code Ann. § 2.106(a) (Vernon 1968) (adopting U.C.C. § 2-106(1) title-passage definition of "sale"); Ill. Ann. Stat. ch. 120, para. 440 (Smith-Hurd 1974 & Supp. 1987) (defining "sale at retail" for purposes of retailer's occupation tax, as relevant here, to mean transfer of ownership or title); Ill. Ann. Stat. ch. 26, para. 2-106(1) (Smith-Hurd 1963) (adopting U.C.C. § 2-106(1)).

regard to the source of the fuel that would fill the orders. Moreover, in neither *National Bellas* nor *Norton* is there any suggestion that title to the shipped goods was passed to the purchaser within the taxing State.[11] Here, it is undisputed that title to the fuel passed in Missouri. And, indeed, in this case, unlike *National Bellas* and *Norton,* the goods sold did not in fact come from the seller's out-of-State stock: the seller never even owned the goods being sold before those goods arrived in the taxing State. Unlike the sellers in *National Bellas* and *Norton,* appellant could not conceivably be described as an out-of-State seller.[12]

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[11] Under U.C.C. § 2-401(1), if a contract merely requires the seller to send goods to the buyer, title passes at the time and place of shipment, not upon later delivery to the buyer. See J.S. App. 4a (quoting Missouri version of that provision).

[12] *National Bellas,* like *Miller Bros.* v. *Maryland,* 347 U.S. 340 (1954), which appellant also cites (J.S. 14), actually involved a use tax rather than a sales tax. Here, the county taxes at issue are sales taxes; and unlike Missouri's statewide sales tax, they are not even accompanied by a "protective" use tax. If the county taxes were use taxes, however, or if the constitutional standards applicable to use taxes applied here, appellant would clearly have no constitutional complaint.

This Court in *National Geographic Soc'y* v. *California Bd. of Equalization,* 430 U.S. 551, 560-561 (1977), ruled that, when a State compels a seller to collect, at the time of sale, a use tax imposed on in-State users, the constitutional nexus requirement focuses on the connection of the *seller* to the State, not of particular sales to the State. In this case, nothing in the record suggests, what is certainly unlikely, that appellant did not have substantial operations in Missouri in 1978-1981, albeit unrelated to these aviation-fuel sales. If appellant had such a presence, which the sellers in *National Bellas* and *Miller Bros.* did not, *National Geographic* makes clear that Missouri and St. Louis County could insist that appellant collect a use tax on aviation fuel. See also *General Trading Co.* v. *State Tax Comm'n,* 322 U.S. 335 (1944); *Nelson* v. *Sears, Roebuck & Co.,* 312 U.S. 359 (1941). Indeed, the validity of such a requirement would follow from appellant's concession that it is liable for the statewide use tax, because, as the dissent in the Missouri Supreme Court recognized (J.S. App. 12a), it is nexus

If, as we have shown, the fact that all relevant aspects of the fuel sales occurred at the airport answers appellant's arguments with respect to the first three components of the *Complete Auto* test, that fact also disposes of appellant's argument with respect to the discrimination component of the *Complete Auto* test. The Missouri provisions that govern the county taxes at issue (Mo. Ann. Stat. §§ 66.615, 94.620 (Vernon Supp. 1987)) state that, when "a retailer has more than one place of business in this state which participates in the sale," the sale is deemed to take place where the initial order is taken. Appellant contends (J.S. 21-22) that that provision discriminates against interstate commerce because a retailer that delivered and passed title to aviation fuel at the airport would not incur the county taxes if it utilized a separate order-taking office in another county in Missouri (perhaps with a lower county sales-tax rate), whereas a retailer that delivered and passed title to aviation fuel at the airport would incur the county taxes if it utilized a separate order-taking office outside the State. The second part of this comparison, however, is hardly clear under Missouri law and, in any event, has no application to appellant. The Missouri Supreme Court had no occasion to decide where a sale would be located for purposes of the county taxes if appellant had an out-of-State office that took orders for fuel sales. There is no basis for questioning the state court's

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to the State, not to any particular county, that should matter for Commerce Clause purposes. See *Hillsborough County* v. *Automated Medical Laboratories*, 471 U.S. 707, 713 (1985); *Town of Lockport* v. *Citizens for Community Action at the Local Level, Inc.*, 430 U.S. 259, 269 (1977); *Railroad Co.* v. *Peniston*, 85 U.S. (18 Wall.) 5, 37 (1873); *Peterman* v. *Coleman*, 764 F. 2d 1416, 1422 (11th Cir. 1985); cf. *Breard* v. *Alexandria*, 341 U.S. 622 (1951); *McGoldrick* v. *Berwind-White Coal Mining Co.*, 309 U.S. 33 (1940); *Wagner* v. *City of Covington*, 251 U.S. 95 (1919).

conclusion (J.S. App. 5a, 7a-8a) that all aspects of appellant's sales, including the taking of orders for fuel sales, took place within Missouri.

CONCLUSION

For the foregoing reasons, the appeal should be dismissed for want of a substantial federal question.

Respectfully submitted.

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MARCH 1988

APPENDIX

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

Case No. RS-82-0105

SHELL OIL COMPANY, PETITIONER

VS

DIRECTOR OF REVENUE STATE OF MISSOURI
TRUMAN STATE OFFICE BUILDING
P.O. BOX 475
JEFFERSON CITY, MISSOURI 65105
RESPONDENT

STIPULATION OF FACTS

Comes now Petitioner, Shell Oil Company, and Respondent, Director of Revenue, by and through their attorneys, who make and enter into the following Stipulation of Facts and agree that they may supplement by competent evidence anything herein which may require supplementation, not inconsistent with the statements, matters and facts agreed to herein and provided further that at any stage of the case any party shall have the right to challenge the legal conclusions to be drawn from any such statement, matter or fact.

1. Shell Oil Company (hereinafter "Shell") is a Delaware corporation with its principal business office at One Shell Plaza, P.O. Box 2463, Houston, Texas 77001.

2. Shell is engaged in the business of, *inter alia*, marketing various petroleum products, including aviation fuel, through out most of the United States.

3. Shell has entered into contracts for the sale of aviation fuel with the following airlines arriving at and departing out of Lambert-St. Louis International Airport: Capital Air, Delta Air Lines, Inc., Republic Airlines, Inc., Garude Indonesian Airways, P.T. Mississippi Valley Airlines, Inc., Ozark Air Lines, Inc., Pan American World Airways, Inc., Southern Air Transport, Inc., Transamerica Airlines, Trans International Airlines, United Air Lines, Inc., World Airways, Inc., and Zantop International Airlines, Inc. Such contracts were accepted and executed by Shell at its Houston, Texas, office.

4. Such contracts entered into between Shell and the respective airlines included an estimated annual gallonage of aviation fuel to be sold to the respective airline by Shell.

5. Shell has certain fuel "exchange agreements" with Amoco Oil Company which allow Shell to sell and deliver aviation fuel at the airport via pipeline from the Amoco Oil Company refinery at Wood River, Illinois. These exchange agreements are accepted either by Amoco at its Chicago, Illinois, office or Shell at its Houston, Texas, office.

6. Lambert-St. Louis International Airport (hereinafter "the Airport") is located in St. Louis County, Missouri.

7. The aviation fuel sold by Shell to the respective airlines is transported from the Amoco Oil Company refinery at Wood River, Illinois, to the Airport through a pipeline owned by St. Louis Pipeline Company and operated by Amoco Pipeline Company, a wholly-owned subsidiary of Standard Oil Company (Indiana).

8. Shell has no equity or other ownership interest of any kind in St. Louis Pipeline Company, Amoco Pipeline Company or Amoco Oil Company.

9. The fuel is metered through a meter owned by Amoco Oil Company at the Airport adjacent to fuel receiving facilities of Allied Aviation Fueling Company of St. Louis, Inc. (hereinafter "Allied Aviation"). This meter is utilized in measuring the fuel transported via the pipeline from Wood River to the facilities of Allied Aviation at the Airport. This metering device at the Airport is "read" by employees of Allied Aviation.

10. A similar metering device owned by Amoco Oil Company at Wood River measures the aviation fuel pumped from Wood River through the pipeline to Allied Aviation's facilities at the Airport. Thus, such fuel is measured when it enteres [*sic*] the pipeline in Illinois and when it leaves the pipeline at the Airport in Missouri.

11. The aviation fuel transported by pipeline from Wood River to the Airport is delivered into storage tanks maintained and operated by Allied Aviation.

12. Allied Aviation operates an aviation fuel storage tank and distribution system at the Airport and, pursuant to contracts with the airlines, renders a fueling service to the airlines operating into and out of the Airport. The airlines compensate Allied Aviation directly for the services rendered to the airlines. Shell makes no remuneration of any kind to Allied Aviation.

13. Shell has no economic or proprietary interest of any kind in Allied Aviation nor does it have any contractual relationship whatsoever with Allied Aviation.

14. The fuel distribution and storage system at the Airport, operated by Allied Aviation, receives shipments of aviation fuel from suppliers other than Shell.

15. Shell does not maintain, operate or own any aviation fuel storage facilities at the Airport.

16. When Allied Aviation records the quantity of fuel delivered into storage, the meter ticket is tendered to the

airlines customer and a copy is sent to Shell at its Chicago Administrative Complex located in Oak Brook, Illinois.

17. The entire operation involving the delivery of aviation fuel from Illinois to Allied Aviation's facilities at the Airport is controlled by employees at Allied Aviation. Allied Aviation's employees, pursuant to instructions from the respective airlines, decide when to request delivery of fuel, the quantity to be delivered, to which airline such fuel is to be delivered, and control the commencement and termination of such deliveries.

18. As a result of the fuel "exchange agrements" [*sic*] between Shell and Amoco Oil Company, and the contracts with the airlines, title to the aviation fuel pumped to Allied Aviation's facilities at the Airport passes simultaneously from Amoco to Shell and then to the respective airline when the aviation fuel flows through Amoco's metering device at the Airport and is delivered into storage.

19. Shell maintains no sales office, administrative office, store, warehouse or other similar facility at the Airport, or anywhere else in the State of Missouri, which in any way participates in the sale or delivery of the aviation fuel in question to the respective airlines at the Airport.

20. The airlines purchasing fuel from Shell are billed by Shell's Chicago Administrative Complex in Oak Brook, Illinois.

21. Shell was assessed for St. Louis County Transportation Sales Tax and St. Louis County Sales Tax allegedly due for the period from March 1, 1978 through February 28, 1981, based solely on the sale of aviation fuel delivered through the pipeline as described above.

22. The assessment for the St. Louis County Sales Tax totaled $68,673.02, composed of Tax in the amount of $52,077.96 with interest thereon of $16,595.06. The assessment for the St. Louis County Transportation Sales Tax

totaled $35,336.51, composed of tax in the amount of $26,038.98 with interest thereon of $8,297.53.

23. During all time periods herein, the St. Louis County Sales Tax and St. Louis County Transportation Sales Tax were in effect and applicable to retail sales pursuant to Chapters 66 and 94, RSMo.

24. Shell has paid and no controversy exists with respect to State sales or use taxes on the sales in question, however, Shell denies that it is liable for such St. Louis County Sales Tax and St. Louis County Transportation Sales Tax and interest thereon.

25. It is hereby agreed that the foregoing Stipulation of Facts are made for the purpose of establishing certain facts only in connection with the above styled cause, Case No. RS-82-0105 and may not be used in any other case or proceeding except cases or proceedings involving Case No. RS-82-0105.

26. The facts stipulated herein existed and were true at all times during the period March 1, 1978 through February 28, 1981.

Executed this 9th day of July, 1984.

By /s/ David C. Agee

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